

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

DALEE OIL COMPANY,)	
<i>Petitioner,</i>)	
)	
v.)	PCB No. _____
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

NOTICE OF FILING

To:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

William D. Ingersoll
Managing Attorney
Ill. Environmental Protection Agency
1021 North Grand Ave. East
Springfield, IL 62702

PLEASE TAKE NOTICE that we have this day filed with the office of the Clerk of the Pollution Control Board the *Petition for Review* a copy of which is enclosed herewith and hereby served upon you.

September 17, 2008

DALEE OIL COMPANY

By: 
Mandy L. Combs
One of its Attorneys

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 - 1115 Harrison
Mt. Vernon, IL 62864
618-242-0246
Counsel for Petitioner Dalee Oil Company

BEFORE THE POLLUTION CONTROL BOARD
OF THE STATE OF ILLINOIS

DALEE OIL COMPANY,)	
<i>Petitioner,</i>)	
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v.)	PCB No. _____
)	(LUST Appeal)
ILLINOIS ENVIRONMENTAL)	
PROTECTION AGENCY,)	
<i>Respondent.</i>)	

PETITION FOR REVIEW

Pursuant to §§ 40 and 57.7 of the Environmental Protection Act ("Act"), 415 ILCS 5/40, 5/57.7, to the Board's regulations on Leaking Underground Storage Tank ("LUST") decisions, 35 ILL. ADM. CODE 105.400 *et seq.*, and to the decision denying continuance of the filing hereof beyond today's date (see Exhibit 1), petitioner Dalee Oil Company ("Dalee") submits this *Petition for Review* of the Illinois Environmental Protection Agency ("Agency") decision attached hereto as Exhibit 2 ("Decision") denying approval of Dalee's Amended High Corrective Action Plan (the "Plan") and further denying approval of the budget associated therewith.

Pursuant to § 57.8(l) of the Act, Dalee further requests the Board to order the Agency to pay Dalee's legal costs for seeking payment in this appeal.

I. THE AGENCY'S FINAL DECISION

The Decision of which review is sought is contained in Exhibit 2 hereto.

II. SERVICE OF THE AGENCY'S FINAL DECISION

The Decision indicates it was mailed August 11, 2008. It was received by Dalee August 13, 2008 and this appeal is timely pursuant to William Ingersoll's letter dated August 21, 2008 of which a true copy is attached as Exhibit 1.

III. GROUNDS FOR APPEAL

A. The Agency's denial of the Plan because certain work had already been performed without Agency approval is erroneous, arbitrary, capricious and contrary to law.

B. The Agency's conclusion that the Plan failed to provide information demonstrating that the technology had a substantial likelihood of successfully achieving compliance with applicable regulations and corrective action remediation objectives and of protecting human health and the environment is erroneous, not supported by the evidence, arbitrary and capricious.

C. The Agency's conclusion that the Plan failed to address issues regarding offsite soil contamination on adjacent properties was erroneous, arbitrary, and capricious.

D. The Agency's conclusion that the Plan now fails to address issues regarding the highway authority agreements and offsite soil contamination, made without consultation with Dalee and without previously specifying that these aspects made the prior plan incomplete and deficient, was erroneous, arbitrary, and capricious.

E. The command by the Agency in the decision appealed from to address the highway authority agreements and offsite soil contamination in a future Corrective Action Plan is inconsistent with the Decision's language that it is final and subject to the appeal provision of §§ 40 and 57.7(c)(4) of the Act.

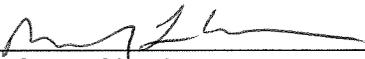
F. The Agency's denial of Dalee's budget was erroneous, arbitrary, capricious, and contrary to law, in that the denial of the Plan with which the budget was associated was erroneous, arbitrary, capricious and contrary to law.

IV. CONCLUSION.

For all the foregoing reasons, petitioner Dalee Oil Company respectfully submits that the Decision should be reversed and the Agency ordered to approve the Amended High Corrective Action Plan and the budget associated therewith, and order the Agency to pay Dalee's attorneys' fees for this appeal.

September 17, 2008

DALEE OIL COMPANY

By: 
One of its Attorneys

John T. Hundley
Mandy L. Combs
THE SHARP LAW FIRM, P.C.
P.O. Box 906 – 1115 Harrison
Mt. Vernon, IL 62864
618-242-0246
Counsel for Petitioner Dalee Oil Company
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1894207-1770



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. Box 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-3397
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROD R. BLAGOJEVICH, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

RECEIVED

(217)782-5544
(TDD: 217-782-9143)

AUG 21 2008

Author's Direct Line: (217)782-9827
E-Mail: william.ingersoll@illinois.gov
Telefax: 217-782-9807

BY: _____

August 21, 2008

Mark Owens, Project Manager
United Science Industries, Inc.
P.O. Box 360
6295 East IL Highway 15
Woodlawn, IL 62898

Re: LPC # 1190555055 - Madison County
 Dalee Oil Company/Highland
 Broadway and Olive Street
 LUST Incident No. 950915

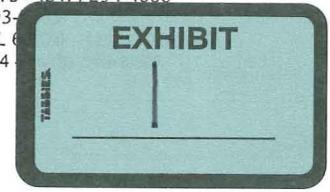
Dear Mr. Owens:

The Illinois Environmental Protection Agency ("Illinois EPA") is in receipt of your August 19, 2008 letter requesting a 90-day extension to the 35-day appeal period in regards to an August 11, 2008 decision regarding the above site and incident. The request is DENIED. It does not appear likely that the additional time would result in a resolution, especially in light of the fact that the request involved is virtually identical to the denied request that is the subject of PCB 08-16. The deadline for filing any appeal of this matter remains at September 17, 2008 based upon an August 13, 2008 received date of the decision.

Sincerely,

William D. Ingersoll, Manager
Enforcement Programs

cc: Clifford Wheeler, BOL/LUST
 Karl Kaiser, BOL/LUST



1894207-1110



ILLINOIS ENVIRONMENTAL PROTECTION AGENCY

1021 NORTH GRAND AVENUE EAST, P.O. BOX 19276, SPRINGFIELD, ILLINOIS 62794-9276 - (217) 782-2829
JAMES R. THOMPSON CENTER, 100 WEST RANDOLPH, SUITE 11-300, CHICAGO, IL 60601 - (312) 814-6026

ROBERT BLUCEWICZ, GOVERNOR DOUGLAS P. SCOTT, DIRECTOR

RECEIVED

217/782-6762

AUG 13 2008

CERTIFIED MAIL

AUG 11 2008 BY: _____

7007 0220 0000 0040 2228

Dalee Oil Company
Attn: Ronald Kruep
1405 Salem Road
Mount Vernon, Illinois 62864

Re: LPC #1190555055 -- Madison County
Highland/Dalee Oil Company
Broadway and Olive Street
Leaking UST Incident No. 950915
Leaking UST Technical File

Dear Mr. Kruep:

The Illinois Environmental Protection Agency (Illinois EPA) has reviewed the Amended High Priority Corrective Action Plan (plan) submitted for the above-referenced incident. This information, dated July 17, 2008, was received by the Illinois EPA on July 22, 2008. Citations in this letter are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Pursuant to Section 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(c), the plan is rejected for the reasons listed in Attachment A.

Pursuant to Sections 57.7(a)(1) and 57.7(c)(4) of the Act and 35 Ill. Adm. Code 732.405(e) and 732.503(b), the associated budget is rejected for the reasons listed in Attachment A.

Pursuant to 35 Ill. Adm. Code 732.401, the Illinois EPA requires submittal of a revised plan, and budget if applicable, within 90 days of the date of this letter to:

Illinois Environmental Protection Agency
Bureau of Land - #24
Leaking Underground Storage Tank Section
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276

EXHIBIT
2

Page 2

Please submit all correspondence in duplicate and include the Re: block shown at the beginning of this letter.

An underground storage tank system owner or operator may appeal this decision to the Illinois Pollution Control Board. Appeal rights are attached.

If you have any questions or need further information, please contact Karl Kaiser at (217) 524-4650.

Sincerely,



Clifford L. Wheeler
Unit Manager
Leaking Underground Storage Tank Section
Division of Remediation Management
Bureau of Land

CLW::KEK\

Attachment: Attachment A
Appeal Rights

c: Mark Owens, USI
BOL File

Attachment A

Re: LPC #1190555055 -- Madison County
Highland/Dalee Oil Company
1405 Salem Road
Leaking UST Incident No. 950915
Leaking UST TECHNICAL FILE

Citations in this attachment are from the Environmental Protection Act (Act) in effect prior to June 24, 2002, and 35 Illinois Administrative Code (35 Ill. Adm. Code).

Plan Denial

1. Pursuant to 35 Ill. Adm. Code 732.405(a), prior to conducting any corrective action activities pursuant to Subpart D of Part 732, the owner or operator shall submit to the Illinois EPA a Low Priority groundwater monitoring plan or a High Priority corrective action plan satisfying the minimum requirements for such activities as set forth in 35 Ill. Adm. Code 732.403 or 732.404, as applicable.

The plan fails to meet the above requirements for the following reason(s):

The majority of the work proposed in this plan has already been performed without Agency approval.

The proposed injection of sodium persulfate/hydrogen peroxide is being denied at this time. Information has not been provided to demonstrate the technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and all corrective action remediation objectives necessary to comply with the Act and regulations and to protect human health of the environment (35 Ill. Adm. Code 732.407(a)(1) or 731.166(b)).

2. Pursuant to 35 Ill. Adm. Code 732.407(a), an owner or operator may choose to use an alternative technology for corrective action in response to a release of petroleum at a High Priority site. Corrective action plans proposing the use of alternative technologies shall be submitted to the Illinois EPA in accordance with 35 Ill. Adm. Code 732.405. In addition to the requirements for corrective action plans contained in 35 Ill. Adm. Code 732.404, the owner or operator who seeks approval of an alternative technology shall submit documentation along with the corrective action plan demonstrating that:

- a. The proposed alternative technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and all corrective action remediation objectives necessary to comply with the Act and regulations to protect human health or the environment;
- b. The proposed alternative technology will not adversely affect human health or the environment;
- c. The owner or operator will obtain all Illinois EPA permits necessary to legally authorize use of the alternative technology;
- d. The owner or operator will implement a program to monitor whether the requirements of 35 Ill. Adm. Code 732.407(a)(1) have been met; and
- e. Within one year from the date of Illinois EPA approval, the owner or operator will provide to the Illinois EPA monitoring program results establishing whether the proposed alternative technology will successfully achieve compliance with 35 Ill. Adm. Code 732.407(a)(1) and any other applicable regulations. The Illinois EPA may require interim reports as necessary to track the progress of the alternative technology. The Illinois EPA will specify in the approval when those interim reports shall be submitted to the Illinois EPA.

The plan fails to meet the above requirements for the following reason(s):

The majority of the work proposed in this plan has already been performed without Agency approval.

The proposed injection of sodium persulfate/hydrogen peroxide is being denied at this time. Information has not been provided to demonstrate the technology has a substantial likelihood of successfully achieving compliance with all applicable regulations and all corrective action remediation objectives necessary to comply with the Act and regulations and to protect human health of the environment (35 Ill. Adm. Code 732.407(a)(1) or 731.166(b)).

3. The Issues regarding the need for highway authority agreements were not addressed in this plan. These issues must be addressed in future Corrective Action Plans.
4. The Issues regarding offsite soil contamination on adjacent properties were not addressed in this plan. These issues must be addressed in future Corrective Action Plans.

Budget Denial

1. Pursuant to Sections 57.7(c) of the Act and 35 Ill. Adm. Code 732.305 or 732.405 and 732.503(b), the associated budget is rejected for the following reason:

The Illinois EPA has not approved the plan with which the budget is associated. Until such time as the plan is approved, a determination regarding the associated budget— i.e., a determination as to whether costs associated with materials, activities, and services are reasonable; whether costs are consistent with the associated technical plan; whether costs will be incurred in the performance of corrective action activities; whether costs will not be used for corrective action activities in excess of those necessary to meet the minimum requirements of the Act and regulations, and whether costs exceed the maximum payment amounts set forth in Subpart H of 35 Ill. Adm. Code 732 cannot be made (Section 57.7(c)(4)(C) of the Act and 35 Ill. Adm. Code 732.505(c)).

:KEK\

Appeal Rights

An underground storage tank owner or operator may appeal this final decision to the Illinois Pollution Control Board pursuant to Sections 40 and 57.7(c)(4) of the Act by filing a petition for a hearing within 35 days after the date of issuance of the final decision. However, the 35-day period may be extended for a period of time not to exceed 90 days by written notice from the owner or operator and the Illinois EPA within the initial 35-day appeal period. If the owner or operator wishes to receive a 90-day extension, a written request that includes a statement of the date the final decision was received, along with a copy of this decision, must be sent to the Illinois EPA as soon as possible.

For information regarding the filing of an appeal, please contact:

Dorothy Gunn, Clerk
Illinois Pollution Control Board
State of Illinois Center
100 West Randolph, Suite 11-500
Chicago, IL 60601
312/814-3620

For information regarding the filing of an extension, please contact:

Illinois Environmental Protection Agency
Division of Legal Counsel
1021 North Grand Avenue East
Post Office Box 19276
Springfield, IL 62794-9276
217/782-5544

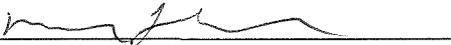
CERTIFICATE OF SERVICE

I, the undersigned attorney at law, hereby certify that I caused copies of the foregoing document to be served by placement in the United States Post Office Mail Box at 14th & Main Streets in Mt. Vernon, Illinois, before 6:00 p.m. this date, in sealed envelopes with proper first-class postage affixed, addressed to:

Dorothy M. Gunn, Clerk
Illinois Pollution Control Board
James R. Thompson Center
100 West Randolph Street
Suite 11-500
Chicago, IL 60601

William D. Ingersoll
Managing Attorney
Ill. Environmental Protection Agency
1021 North Grand Ave. East
Springfield, IL 62702

September 17, 2008



Mandy L. Combs

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THE SHARP LAW FIRM, P.C.
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